IN THE HIGH COURT OF BOMBAY AT GOA.

CIVIL REVISION APPLICATION NO. 32 OF 2002.

Shri Digambar Atmaram Prabhu
r/o Gaonkarwaddo, Usgao,
Ponda. ... Applicant.

Versus

1. Shri Rajaram Datta Naik,
2. Shri Bhanudas Datta Naik,
both r/o Usgaon Tisk, Goa.
3. Shri Datta Shankar Madkaikar
r/o Tisk, Usgaon, Goa.
4. Smt. Durga Datta Madkaikar,
r/o Tisk, Usgaon, Goa. ... Respondents.

Mr. S.G. Dessai, Senior Advocate with Mr. Arun Bras de Sa, Advocate for the Applicant.

Mr. J. Godinho, Advocate for the Respondents 1 and 2.

Mr. A.D. Bhobe, Advocate for the Respondents 3 and 4.

Coram: P.V. HARDAS, J.

Date: 19th September 2002.

ORAL JUDGMENT.

This Civil Revision Application arises against the decision of the Civil Judge, Junior Division, Ponda, dated 14th January 2002, in Civil Miscellaneous Application No. 245/2001/B in Regular Civil Suit No. 123/90/B.

2. By consent of parties, this revision is taken up for final disposal at the stage of admission.

3. The facts necessary for decision of this revision are that the present applicant had filed Civil Miscellaneous Application No. 245/2001/B to join him as

defendant. On hearing the learned counsel for the parties, the learned Civil Judge, Junior Division, Ponda, came to the conclusion that there was "absolutely no whisper of whatsoever nature against the third party for dispossessing or threatening their (plaintiffs) possession." The learned trial Court also found that no relief was sought against the present applicant. The learned trial Court, therefore, found that the present applicant was neither a necessary nor a proper party and, therefore, declined to exercise its discretion in allowing the application. The learned trial Court also found that the presence of the applicant was not necessary for the just decision of the case. The trial Court also found that the present application suffers from delay and laches and, therefore, dismissed the said application with costs.

4. I have heard Mr. Dessai, learned senior advocate on behalf of the applicant and Mr. Godinho, learned counsel appearing for the respondents 1 and 2 and Mr. Bhobe, learned counsel appearing for the respondents 3 and 4. The present revision, apart from the fact that no charge against the learned trial Court can be sustained for any material irregularity in the exercise of its jurisdiction, is not maintainable, in view of the amended Section 115 of the Code of Civil Procedure. The proviso to Section 115 of the Code of

Civil Procedure reads as under:-

> "Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings."

In view of the proviso, it cannot be said that, if an order was made in favour of the applicant, it would have finally disposed of the suit and, therefore, the revision is not maintainable.

5. In view of the above discussion, there is no merit in the revision and the same deserves to be dismissed and is, accordingly, dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.

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